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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/816,750	04/02/2004	Ricky Dean Madson	16571-US	1145
30680 7590 05/21/2008 DEERE & COMPANY ONE JOHN DEERE PLACE MOLINE, IL 61265				
EXAMINER				
VANAMAN, FRANK BENNETT				
ART UNIT		PAPER NUMBER		
3618				
MAIL DATE		DELIVERY MODE		
05/21/2008		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/816,750

**Applicant(s)**

MADSON ET AL.

**Examiner**

Frank B. Vanaman

**Art Unit**

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**Period for Reply** -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 12 March 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-24, 26 and 44-65 is/are pending in the application.
- 4a) Of the above claim(s) 46-65 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-23 and 26 is/are allowed.
- 6) ☒ Claim(s) 24, 44 and 45 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SF/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on March 12, 2008 has been entered.

***Amendment Papers***

2. The examiner notes some inconsistencies in the claims presented in the most recent amendment. The amendment papers (see page 5 of the submission) refer to claims 27-43 as being canceled, and then immediately present claims 28 and 29. In this case, it is understood, since a request to cancel has been explicitly set forth, that the presentation of claims 28 and 29 is a typographical error, and that these claims are indeed canceled. The amendment papers (see pages 6-9) present claims 46-65 as being withdrawn, however the remarks (see page 10 of the submission) refer to claims 39 and 46-65 as being canceled, however there is no express instruction to cancel claims 46-65 in the listing of claims.

As is best understood, claims 1-24, 26 and 44-65 are pending, with claims 25 and 27-43 being canceled and claims 45-65 being withdrawn. An office action directed to claims 1-24, 26, 44 and 45 follows.

In a brief telephone conference with Michael Dixon on May 16, 2008, applicant confirmed that claims 27-43 are canceled and claims 46-65 had been intended to be canceled.

***Claim Rejections - 35 USC § 112***

3. Claim 24 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 24 recites that the diverting surface and the shroud

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extend fully to the hood when the hood is closed, however this limitation appears to contradict the limitation which has been added to claim 1, lines 19-21.

***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

5. Claims 44 and 45 are rejected under 35 U.S.C. 102(e) as being anticipated by Albright et al. (US 2003/0136544, cited previously). Albright et al. teach a vehicle hood assembly (71, 31, 38, 40 – note paragraphs 0023 and 0031) including one or more air discharge apertures (71) provided with screens or grids (73), and located so as to correspond in longitudinal location with a fan (64, note figures 2, 4, 9), the fan having blades which have a natural radial discharge component, one or more air diverting structures (68, 69) which extend toward the hood, and which are angled from the axis of the fan (normal angle with respect to 68, acute angle with respect to 69), and which 'closely match', to the breadth claimed, the discharge angle of the fan, a gap (92) being provided between a portion of the hood (38, 40) and one or more of the diverting structures (inner portion of 68 - note figure 3), such that air flow is entrained from the engine compartment (16, note figure 9), by a venturi effect associated with the air exiting the hood (e.g., by the air in the regions between 69 and 38 and 40 being at a lower pressure than the air in compartment 16, thus entraining flow from compartment 16).

***Allowable Subject Matter***

6. Claims 1-23 and 26 are allowed.
7. Claim 24 is not rejected as being unpatentable over or anticipated by the prior art, however its subject matter appears to contradict the recitation in claim 1 from which it depends, and as such, it is not clearly in condition for allowance at this time.

***Response to Comments***

8. Applicant's comments, filed with the request for continued examination and the amendment have been carefully considered. As regards the confusion with which claims are pending, withdrawn and canceled, the examiner notes that this amendment is technically non-compliant with the requirements of 37 CFR 1.121, however the non-compliance does not appear to affect the claims which would be treated by this office action, and in the interest of compact prosecution, the instant office action is presented, rather than a notice of non compliant amendment. It would be preferred that future amendments are made in compliance with the requirements of at least 37 CFR 1.111 and 1.121.

As regards applicant's assertions concerning the subject matter of claim 25, the examiner notes that such subject matter has not been incorporated into claim 44. Applicant is reminded that claims are cumulative. Claim 25 includes all limitations recited therein as well as all limitations of claim[s] from which it depends. In this case, the subject matter of claim 25 includes that of claim 1, from which it depends. Claim 44 has not been amended to include the subject matter of claim 25. Rather claim 44 is of a notably broader scope. Note, due to this notably broader scope of recitation, the application of the reference to Albright et al., in an admittedly broad, but not unreasonable, interpretation.

***Conclusion***

9. Any inquiry specifically concerning this communication or earlier communications from the examiner should be directed to F. Vanaman whose telephone number is 571-272-6701.

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Any inquiries of a general nature or relating to the status of this application may be made through either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A response to this action should be mailed to:

Mail Stop \_\_\_\_\_  
Commissioner for Patents  
P. O. Box 1450  
Alexandria, VA 22313-1450,

Or faxed to:

PTO Central Fax: 571-273-8300

**F. VANAMAN**  
**Primary Examiner**  
**Art Unit 3618**

/Frank B Vanaman/  
Primary Examiner, Art Unit 3618